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TRANSCRIPT OF RECORD

21

Supreme Court of the United States

OCTOBER TERM, 1927~~8~~

No. ~~740~~ 60

W. A. FROST, DOING BUSINESS UNDER THE NAME OF MITCHELL GIN COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, FRED CAPSHAW, FRANK CARTER, ET AL., ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED FEBRUARY 3, 1928

(33,192)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 14, 1928

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[fol. 3]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 793. In Equity

W. A. Frost, Doing Business under the Name of Mitchell Gin Company, Complainant,

vs.

Corporation Commission of the State of Oklahoma, Fred Capshaw, Frank Carter, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George Short, Attorney General for the State of Oklahoma, and the Durant Co-operative Gin Company, Defendants

Bill of Complaint—Filed April 14, 1926

W. A. Frost, doing business under the name of Mitchell Gin Company of Durant, Oklahoma, Complainant herein, brings this bill of complaint against the Corporation Commission of the State of Oklahoma, Fred Capshaw, Chairman, Frank Carter and E. R. Hughes, members, of the Corporation Commission of the State of Oklahoma, and against George Short, Attorney General for the State of Oklahoma, and the Durant Co-operative Gin Company, and each of them, and alleges the following:

I

The Complainant alleges that he is, and was at all times hereinafter mentioned, engaged in and duly authorized to engage in the operation of a cotton gin in the City of Durant, Oklahoma, under a license duly and regularly issued by the Corporation Commission of the State of Oklahoma under and by virtue of Article IV of Chapter 20, Compiled Laws of Oklahoma of 1921 as amended by Chapter 191 of

the Session Laws of Oklahoma of 1923 and by Chapter 109 of the Session Laws of Oklahoma of 1925.

[fol. 4] Complainant alleges that the Corporation Commission is and was at all times hereinafter mentioned, an administrative body created by the Constitution of the State of Oklahoma, having its offices and headquarters and principal place of business in the City of Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and that the defendants, Fred Capshaw, Frank Carter and E. R. Hughes, are, and at all times hereinafter mentioned were, the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma with their headquarters in Oklahoma City, Oklahoma County, State of Oklahoma, and that George Short is, and was at all times hereinafter mentioned, the duly elected, qualified and acting Attorney General for the State of Oklahoma with his official headquarters in Oklahoma City, Oklahoma County, State of Oklahoma and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma and under and by virtue of the laws of the State of Oklahoma is, and was at all times hereinafter mentioned, the duly authorized, qualified and acting attorney for said Corporation Commission of the State of Oklahoma.

Complainant alleges that the defendant, Durant Cotton Gin Company, is a domestic corporation organized under and pursuant to Article XIX of Chapter 34 of the Compiled Statutes of Oklahoma, 1921.

Complainant alleges that this is a suit in equity between citizens of the same State arising under and involving the construction and application of the Constitution and laws of the United States, and that the amount in controversy, exclusive of interest and costs, exceeds the sum of [fol. 5] $3000.00.

Complainant alleges that under and by virtue of Section 3712 of Chapter 20 of Article IV, Compiled Statutes of Oklahoma, 1921, that cotton gins are public utilities and the operation of same for the purpose of ginning seed cotton is a public business and that plaintiff in the operation of his said cotton gin at Durant, Oklahoma is engaged in a public business and that the said cotton gin is a public utility; that under and by virtue of Section 3715 of said

Chapter and Article aforesaid, the Corporation Commission is invested with the power and authority and is charged with the duty of regulating and controlling such cotton gins in all matters relating to the performance of such duties and the charges therefor, with power to fix rates, rules, charges and regulations to be observed by him and by all other persons operating gins in the State of Oklahoma and that by virtue of Section 3717 of said Chapter and Article said Corporation Commission is vested with the power and authority to enforce its orders against any person, firm, company or corporation maintaining or operating a gin or gins by imposing fines against him or them for the violation of any of its said orders.

Complainant further alleges that under the provisions of Section 3713 of said Chapter and Article that no person or persons or corporations in the State of Oklahoma are permitted to maintain and operate a gin for the purpose of ginning seed cotton, without first having secured a license for such purpose from the said Corporation Commission and that by virtue of Section 3714 of said Chapter and Article as amended by Chapter 109 of the Session Laws of 1925, that all persons and corporations are prohibited from constructing or installing, and the Corporation Commission is prohibited from licensing, any new gin plant until satisfactory showing shall have been made to the Corporation Commission setting forth that such gin is a needed utility and that the proposed corporation, company, firm or individual is a competent and desirable corporation, company, firm or individual to establish and operate said gin, as may appear in the discretion of said Commission, and that said provisions apply to all persons, firms, corporations and classes of people with the exceptions hereinafter set forth.

[fol. 6] Complainant further alleges that said Section 3714, as amended by Chapter 109 of the Session Laws of 1925 contains the following proviso:

"That on the presentation of a petition for the establishment of a gin to be run co-operatively, signed by one hundred citizens and tax payers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin."

Complainant alleges that the said defendant, Durant Co-operative Gin Company, heretofore on to-wit, the — day of —— 1926 filed its application and petition with the Corporation Commission of the State of Oklahoma for the establishment of a gin to be run co-operatively at Durant, in Bryan County, Oklahoma, under and by virtue of the provisions of said proviso; that Complainant herein on the 14th day of April, 1926, filed its written protest with said Corporation Commission against the issuance of a license to the said Durant Co-operative Gin Company, alleging in said protest that there were four gins already located and being operated in the City of Durant, Oklahoma; that said gins were ample to properly and adequately gin all the cotton raised in the vicinity of Durant, Oklahoma; that there was no necessity for the establishment and operation of another gin at said place and that a showing could not be made to the Corporation Commission that such gin so sought to be established and run by the said Durant Co-operative Gin Company is a needed utility, and that in fact said gin is not a needed utility; and further alleging that the granting of such license to and the establishment of such gin by the said Durant Co-operative Gin Company is and will be destructive of Complainant's business and will deprive him of his property without due process of law and would deny him the equal protection of the law in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States and that the provisions of said proviso are discriminatory, arbitrary and violate the due process clause and equal protection clause of said Fourteenth Amendment to the Constitution of the United States.

[fol. 7] Complainant further alleges that when said case was called for hearing that Complainant offered to introduce evidence proving the matters and things alleged in his said protest aforesaid, whereupon the said Corporation Commission refused to hear any evidence thereon, holding that it was its mandatory duty to grant said license without any proof as to the need or convenience of such utility, by reason of the provisions of said proviso and that it was without jurisdiction, power or authority to pass upon the Constitutionality of said provision and stated that it would issue said license.

Complainant now avers that the provisions of said proviso are discriminatory, arbitrary and are in violation of and contrary to the due process clause and equal protection clause of the Fourteenth Amendment to the Constitution of the United States and if a license should be granted to the said Durant Co-operative Gin Company by virtue thereof and a gin established and operated by virtue of said license, that he would be deprived of his property without due process of law and would be denied the equal protection of the law.

Complainant further alleges that said Corporation Commission in granting the said license will not be acting legislatively but ministerially and no appeal lies under the laws of the State of Oklahoma from said order granting said license and the same will be enforcible immediately.

Complainant further alleges that unless restrained and enjoined the said Corporation Commission will issue such license to the said Durant Co-operative Gin Company to establish its gin at Durant, Oklahoma and the said Durant Co-operative Gin Company will so establish and operate said gin which will result in irreparable damage and loss to this Complainant by the impairment and practical destruction of Complainant's business without due process of law. Adequate relief at law therefore is not available to Complainant and by reason and virtue of all of said facts aforesaid and threatened acts of said Corporation Commission of the State of Oklahoma and the Durant Co-operative Gin Company of Durant, Oklahoma, and the penalty statute of the State of Oklahoma this Complainant is and will be deprived of his property without due process of law and will be denied the equal protection of the law.

[fol. 8] Wherefore, Complainant prays that the defendants, the Corporation Commission of the State of Oklahoma, Fred Capshaw, Frank Carter and E. R. Hughes constituting said Corporation Commission of the State of Oklahoma, and George Short, Attorney General of the State of Oklahoma, their assistants, agents and employees, and all persons acting through or under them, be restrained and enjoined from issuing the said license to the said Durant Co-operative Gin Company and that the defendant, Durant Co-operative Gin Company, its assistants, agents and employees and all persons acting through or under

them, be restrained and enjoined from the establishment and operation of a cotton gin at Durant, Oklahoma.

That this Court set this cause for hearing on application for interlocutory injunction on the — day of ——, 1926 and that on said hearing the Court issue its injunction, preliminary until final hearing and perpetual thereafter in accordance with said restraining order, and Complainant prays that in the meantime a temporary restraining order be issued in accordance with its prayer for said preliminary injunction, and in order that the said plaintiff may not suffer the irreparable injury and damage that it otherwise would suffer, as is alleged and charged in said bill of complaint.

That on said final hearing that said preliminary injunction be made perpetual as aforesaid.

That the Complainant may have such other and further relief as may be just, and equitable and necessary.

An this Complainant prays that there shall be issued out of this Court, directed to the Marshal, a writ of subpœna, to be served upon the defendants, directing them upon a certain day and under certain pain to be and appear before this Honorable Court and then and there true, direct and perfect answer to make to the premises, but not under oath, answer under oath to be expressly waived; and further, to stand to, abide and perform such other and further direction as may be conformable to equity and good conscience, as to this Court shall seem meet.

And your Complainant will ever pray.

W. A. Frost, by Robt. M. Rainey, Streeter B. Flynn,
[fol. 9] Geo. M. Green, Frank G. Anderson, Calvin Jones,
Attorneys for Complainant.

Duly sworn to by R. M. Rainey. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 10] In United States District Court

[Title omitted]

Motion to Dismiss and Answer—Filed April 24, 1926

Comes now the Defendants, Corporation Commission of the State of Oklahoma, Fred Capshaw, Frank Carter, and

E. R. Hughes, members thereof, and George Short, Attorney General of the State of Oklahoma, and the Durant Cooperative Gin Company, and for answer herein files this its motion to dismiss and answer the allegations contained in the bill of complaint filed herein as follows, to wit:

I

Defendants move the court to dismiss the bill of complaint herein for the following reasons, to wit:

a.) That bill of complaint and the allegations contained therein are insufficient in law or equity to constitute a basis for the relief sought.

b.) For the reason that this action is prematurely brought under the rule of comity existing and practiced by the Federal courts in their relationship to the State courts including the courts of the State of Oklahoma in that the matters and things contained and alleged in said [fol. 11] bill of complaint are now pending in a case in the Supreme Court of the State of Oklahoma and should be disposed of there as a condition precedent to seeking relief in this tribunal.

c.) For the reason that Complainant, W. A. Frost, has an adequate remedy at law in that he is entitled to an appeal from the contemplated action of the Corporation Commission of the State of Oklahoma as alleged in said bill to the Supreme Court of the State of Oklahoma, and that therefore he should pursue that remedy rather than the seeking of equitable relief herein.

d.) For the reason that no constitutional right of said Complainant, W. A. Frost, is shown by said bill to be involved or violated by the contemplated action of Defendants herein, or any of them.

II

Defendants and each of them further answering, admit that Complainant is engaged in and duly authorized to engage in operation of the cotton gin in the City of Durant, Oklahoma, under a license duly and regularly issued by the Corporation Commission of the State of Oklahoma under and by virtue of Art. IV. of Chapt. 20, Complied Laws of Oklahoma of 1921, as amended by Chapt. 191 of the Session

Laws of Oklahoma of 1923 and by Chapt. 109 of the Session Laws of Oklahoma of 1925.

Defendants and each of them admit that the Corporation Commission of the State of Oklahoma is and was at all times mentioned in said bill of complaint, an administrative body created by the Constitution of the State of Oklahoma having its offices and headquarters and principal place of business in the City of Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and that the Defendants, Fred Cap- [fol. 12] shaw, Frank Carter, and E. R. Hughes, are and at all times mentioned were the duly elected, qualified and acting members of said Commission, with their headquarters in Oklahoma City, Oklahoma County, State of Oklahoma, and that George Short is and was at all times mentioned duly elected, qualified and acting Attorney General for the State of Oklahoma with his official headquarters in Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and that under and by virtue of the laws of the State of Oklahoma he is and was at all times mentioned a duly authorized and qualified Attorney for the State of Oklahoma and for the Corporation Commission of the State of Oklahoma. Defendants in this connection, however, allege that in addition to the administrative authority exercised by the Corporation Commission of the State of Oklahoma, to also possess legislative authority and in some instances exercise quasijudicial authority.

Defendants deny that this is a proper suit in equity between citizens of the State of Oklahoma arising under and involving the construction and application of the Constitution and laws of the United States and deny that the amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000.00.

Defendants admit that Defendant Durant Co-operative Gin Company is a domestic corporation organized under and pursuant to Article XIX of Chapter 34, Compiled Statutes of Oklahoma 1921.

Defendants admit that under and by virtue of Section 3712 of Chapter 20 of Article IV, Compiled Statutes of Oklahoma 1921, cotton gins are public utilities and that the

operation of same for the purpose of ginning seed cotton is a public business and that Plaintiff in the operation of his cotton gin at Durant, Oklahoma, is engaged in a public business and that the said cotton gin is a public utility. They further admit that under and by virtue of Section 3715 of said Chapter and Article, the Corporation Com- [fol. 13] mission is vested with the power and authority and is charged with the duty of regulating and controlling such cotton gins in all matters relating to the performance of such duties and the charges therefor, with power to fix rates, rules, charges, and regulations to be observed by him and all other persons operating gins in the State of Oklahoma and that by virtue of Section 3717 of said Chapter and Article the Corporation Commission is vested with the power and authority to enforce its orders against any person, firm, or corporation maintaining or operating a gin or gins by the imposition of fines against them for the violation of any said orders.

Defendants admit that under the provision of Section 3715 of said Chapter and Article that no person or persons or corporations of the State of Oklahoma are permitted to maintain or operate a gin for the purpose of ginning seed cotton without first having secured a license for such purpose from the Corporation Commission, and that by virtue of Section 3714 of said Chapter and Article as amended by Chapter 109 of the Session Laws of 1925 that all persons and corporations are prohibited from the constructing or installing any new gin plant until satisfactory show ing shall have been made to the Corporation Commission setting forth that such gin is a needed utility and that the proposed corporation, company, firm, or individual is a Competent and desirable corporation, company, firm, or individual to establish and operate said gin as may appear in the discretion of said Commission, and that said provisions apply to all persons, firms and corporations and classes with the exceptions set forth by the bill of complaint.

Defendants and each of them admit that said Section 3714 as amended by Chapter 109 in the Session Laws of 1925 contains the following proviso, to wit:

[fol. 14] "That on the presentation of a petition for the establishment of a gin to be run co-operatively, signed

by one hundred citizens and tax payers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin."

Defendants admit that Defendant Durant Co-operative Gin Company did on — day of ——, 1926, file its application and petition with the Corporation Commission of the State of Oklahoma for the establishment of a gin to be run co-operatively at Durant in Bryan County, Oklahoma, under and by virtue of the provisions of said proviso; That Complainant herein did on the 14th day of April 1926, file its written protest with said Corporation Commission against the issuance of said license to the Durant Co-operative Gin Company, alleging in said protest that there were four gins already located and being operated in the City of Durant, Oklahoma, and that said gins were ample to properly and adequately gin all the cotton raised in the vicinity of Durant, Oklahoma, and that there was no necessity for the establishment and operation of another gin at said place, and that a showing could not be made to the Corporation Commission that such gins so sought to be established and run by the said Durant Co-operative Gin Company, is a needed utility and that in fact said gin is not a needed utility; that said protest further alleged that the granting of such license to and the establishment of such gin by applicant would be destructive of Complainant's business and would deprive him of his property without due process of law and would deny him equal protection of the law in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States and that the provisions of said proviso are discriminatory, arbitrary, and violate the due process clause and equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 15] Defendants also admit that when said case was called for hearing Complainant offered to introduce evidence proving the matters and things alleged in his protest aforesaid, but upon objection interposed by the representative of the applicant the Corporation Commission refused to allow the presentation of testimony thereon, holding that under the statutes as amended, it was a mandatory duty to grant such license wihout proof as to the need or convenience of such utility, and that it was without jurisdic-

tion, power, or authority to pass upon the constitutionality of said provisions as stated and announced that the license would be issued after conference between the entire membership of the Commission.

III

Defendants and each of them deny specifically the contents of said protest together with the allegations set forth therein; deny that gins already operating in Durant are ample to efficiently and adequately gin all the cotton raised in Durant, and deny that there was no necessity for the operation of another gin at said place, or that a showing could not be made that such gin so sought to be established and run by the said Durant Co-operative Gin Company is a needed utility and deny the allegation that said gin is not a needed utility.

IV

Defendants and each of them deny that the provisions of the proviso enacted by the 1926 Session of the Legislature and found in Chapter 109 of the Session Laws of 1925 are discriminatory, arbitrary or in any way violative of or contrary to the due process clause or equal protection clause of the Fourteenth Amendment to the Constitution of the United States. They further deny that the issuance of a license to Defendant Durant Co-operative Gin Company would in any way deprive Complainant of his property without due process of the law or that it would [fol. 16] deny the equal protection of the law.

V

Defendants deny the allegation of the bill of complaint in which it is set forth that no appeal lies under the laws of the State of Oklahoma from the granting of a cotton gin license and deny that Complainant will be subject to any violation of his constitutional rights under the Federal Constitution by the immediate enforcement of any order granting such license, for the reason that Chapter 20, Article IV, Compiled Oklahoma Statutes 1921 as amended by Chapter 109 of the Session Laws of 1925 and in Section 3716 of said Chapter so amended provides as follows:

"Appeals to the Supreme Court. The orders made by said Commission fixing rates, charges, rules and regulations as to any person, persons or corporation operating any gin or gins may be reviewed on appeal to the Supreme Court in the same manner, form, jurisdiction and procedure as applied to such orders made relative to transportation and transmission companies."

In this connection, Defendants further answering, allege the fact to be that at the time of the filing of the protest herein before the Corporation Commission there were pending two other similar applications for license to run and operate a cotton gin co-operatively, to wit: an application for such a gin at the town of Kinta, Oklahoma, and an application for such a permit at the town of Bokchito, Oklahoma; that similar protests were urged in each of those cases to that which was interposed in the cause now before the court; that in the case of the application for such a permit at Bokchito a permit was on the — day of April, 1926, issued by the Commission pursuant to hearing had; that thereupon notice of an appeal to the Supreme Court of the City of Oklahoma was given and thereafter on the — day of April 1926 the Corporation Commission by Journal Entry duly made and entered allowed the appeal prayed for and ordered a transcript of the entire proceedings had before the Commission to be prepared and certified to the Supreme Court for use by that court in said appeal; that [fol. 17] the issues in said case now on appeal in the Supreme Court of the State are identical with issues in this cause; that by the provisions of Section 21 of Article IX of the Constitution of the State of Oklahoma such appeals shall have precedence on the docket of the Supreme Court, shall be heard and disposed of promptly by the court irrespective of its place or session next after the habeas corpus and the State cases already on the docket of the court. A copy of the notice of appeal in said cause, as well as a copy of the journal entry allowing same and ordering transcript of proceedings to be prepared and filed in the Supreme Court of the State of Oklahoma are each attached hereto marked, "Defendants' Exhibits A and B," respectively.

Further answering, Defendants and each of them aver that in the operation of the cotton gins now located in the City of Durant in ginning seed cotton as public utilities,

the facts will show that for the year 1924-25 under the rate in effect at that time with the gins operating therein, the gins in which Complainant is interested as owner or stockholder have made excessive profits upon said operation; that Complainant herein in addition to his ownership in what is known as the Mitchell Gin is also an interested owner and stockholder in the co-operative gin of Durant, and that the facts and records available disclose that for the ginning season 1924-25 the Mitchell Gin enjoyed a net earning over and above all operating expenses, taxes, and other charges, of 18 per cent. upon the book value thereof undepreciated; that what is known as the Co-operative Gin — per cent. of the stock of which is owned by Plaintiff, for the ginning season 1924-25 enjoyed a net earning on the book value undepreciated of 153.6 per cent. after allowing all operating expenses including taxes and that the two gins for the same year enjoyed an average net earning after deducting all operating expenses of 85.8 per cent.

[fol. 18] The Defendants further answering aver that the cotton production industry including the gathering, picking, ginning, and stowing and marketing thereof is a leading agricultural pursuit insofar as values are concerned within the State of Oklahoma; that the ginning, marketing and processing of said product is one that is subject to continual abuse in that a large proportion of the gins in the State of Oklahoma have been constructed and are operated by those persons who are also interested in the purchase of cotton-seed extract from the cotton as well as in the purchase of the staple after it is ginned and processed for marketing; that such concerns as are engaged with cotton-seed business as well as the cotton buying business and also operating gins in connection therewith have an advantage amounting to a virtual monopoly of such products within the State of Oklahoma.

That the State of Oklahoma through legislative enactments throughout the past has by the adoption of legislation designed to foster and encourage agriculture, enacted statutes permitting all persons as well as those engaged in agriculture and horticulture to organize for the purpose of conducting agricultural, dairy, live stock, irrigation, horticultural, mercantile, manufacturing, mechanical, and industrial business upon a co-operative plan; that pursuant

to said policy the Legislature of the State of Oklahoma has enacted two statutes, the first of which enacted by the 1917 Session of the Legislature of the State of Oklahoma and effective June 14, 1917 is found in Article XVI Chapter 34, Compiled Oklahoma Statutes 1921 and provides that co-operative agricultural or horticultural associations instituted for the purpose of mutual help and not having capital and stock or conducted for profit may be formed under the provisions of this act by any number of persons, not less than five, to engage in agriculture or horticulture. It outlines the provisions which are to be incorporated in the articles of association, the powers of such association, the [fol. 19] admission of members into the Association, the manner and way in which the business of such concern may be operated, all of which is for the mutual benefit and for the purpose of rendering services described in its articles of association to membership only, this act is strictly and distinctly non-profit, mutual, self-help organiaztion and is clearly distinguishable in every material respect from the ordinary corporation organized for profit and for the purpose of engaging in corporate enterprises.

The second statute, adopted by the Session of the Legislature of 1919 and approved April 4, 1919, provides that ten or more persons may form a corporation for the purpose of conducting an agricultural, dairy, live stock, irrigation, horticultural, mercantile, mining, manufacturing, mechanical or industrial business upon a co-operative plan and with their associates, successors and assigns may become and be a body politic and corporate by complying with the provisions of this act. This act as amended by the Legislature of 1923 as shown by Chapter 167, Session Laws 1923, authorizes ten or more persons who may so desire to incorporate co-operatively to engage in the enterprises and business set forth in the first section thereof. The act provides in detail the requisites for articles of incorporation, the way and manner in which said articles may be amended, the powers to be exercised by said corporations, the amount of stock to be held and that no stock shall be sold at less than par value, that 20 per cent. of the par value of the stock subscribed for shall be paid in before the corporation commences business, and that no certificate of stock shall be issued to any person until the full amount of the subscrip-

tion thereof shall have been paid, that no person shall become a shareholder except by consent of the Board of Directors and that not more than 5 per cent. of the stock outstanding at any time and not more than $500.00 in par value shall be held by or for one person, firm or corporation; that each shareholder or subscriber shall only be entitled [fol. 20] to one vote and no more, irrespective of the number of shares owned; that if the indebtedness at any time of the corporation shall exceed the amount of its subscribed capital stock and surplus, the Directors assenting thereto shall be personally and individually liable for such excess to the creditors except for indebtedness created in favor of the State warehouse revolving fund. Section 5648 of said chapter provides for the apportionment in the handling of the profits and earnings of such associations from time to time not less than once in each year and imposing the following requirements:

"1) Not less than ten per cent thereof accruing since the last apportionment shall be set aside in a surplus or reserve fund until such fund shall equal at least fifty per cent of the paid up capital stock.

"2) Dividends at a rate not to exceed eight per cent per annum, may, in the discretion of the directors, be declared upon the paid up capital stock. Five per cent may be set aside for educational purposes.

"3) The remainder of such net earnings and profits shall be apportioned and paid to its members ratably upon the amounts of the products sold to the corporation by its members, and the amounts of the purchases of members from the corporation; provided, that if the by-laws of the corporation shall so provide the directors may apportion such earnings and profits in part to non members upon the amounts of their purchases and sales from or to the corporation."

Section 5651 prohibits the use of the word "co-operative" by by any person, firm, or association other than such as shall be organized under the terms of said act, and also provides for the forfeiture of the charter of any corporation organized under the act which fails to comply with all provisions of the act and further authorizes the Secretary of State to recall the charter of any such corporation.

Moreover, with respect to the distinction and classification by the Legislature of the State of Oklahoma and cooperative concerns engaged in the ginning of cotton as public utilities, defendants aver that the same distinction has been made by Congress of the United States in various acts of legislation by that body; one of the latest instances of which is the Federal Revenue Act of 1921, which by the [fol. 21] terms thereof, in Sec. 231, expressly distinguishes and classifies such organizations and associations by exempting them from the payment of income taxes.

VI

Defendants further answering aver that the Durant Cooperative Gin Company is a cooperative corporation organized under Article 19 Compiled Oklahoma Statutes 1921 as amended by Chapter 167 Session Laws 1923, permitting ten or more persons to form such an organization for the purpose of conducting an agricultural, dairy, live stock, irrigation, horticultural, mercantile, manufacturing, mechanical or industrial business on a cooperative plan; that a copy of its articles of incorporation is attached hereto and made a part hereof, marked Exhibit "C."

Under the head of the purposes for which this corporation is formed, there are set out numerous distinguishing characteristics, the most important of which is contained in paragraph A thereof, which reads as follows, to-wit:

"To handle co-operatively and collectively the problem of ginning, grading, handling, processing, storing, shipping, warehousing and marketing cotton and cotton products."

That said corporation is composed of 112 cotton growers, citizens and taxpayers of Bryan County, Oklahoma, as shown by a certificate of the secretary thereof, under oath, attached hereto and made a part hereof and marked Exhibit "D," who have associated themselves for the purposes disclosed by said articles of incorporation, under the terms of said statute; that the petition submitted to the Corporation Commission as a basis for action by it in the granting of a license or permit to engage in cooperative ginning, which gave rise to this cause of action, is signed

by the 112 stockholders who are also citizens and taxpayers of Bryan County, Oklahoma, as is disclosed by a certificate from the County Treasurer of Bryan County, Oklahoma, which certificate is attached hereto and made a part hereof and marked Exhibit "E."

[fol. 22] Defendants further allege and aver that pursuant to Section 5648 Compiled Oklahoma Statutes 1921, and pursuant to numbered paragraph 3 thereunder, the Durant Cooperative Company, has provided by its By-laws for the apportionment of earnings and profits of said association to non members who may patronize said corporation on the amount of gin patronage shown by the books of the corporation.

Moreover defendants further allege and aver that the citizens and taxpayers associating themselves together in the corporation aforesaid, were authorized by the terms of the statute of the State of Oklahoma passed in 1917 and contained in Chapter 16 of said Article 34, in a non-profit non-stock association for the purpose of rendering service to the members of said association solely, and said defendant Durant Cooperative Gin Company now alleges and avers that in case it is found impracticable or illegal for it to organize under the terms of the 1919 statute that it will organize and operate as an association under the terms of the 1917 Act as a non-profit, purely cooperative and mutual association for the purpose of rendering service to its membership only, either of which organizations defendants allege and aver come within the amendment to the cotton ginning statute of 1925, providing for the licensing by the Corporation Commission of gins "to be run cooperatively."

Having fully answered all the matters and things alleged in said Bill of Complaint, the defendants and each of them pray this Honorable Court that said Bill of Complaint be dismissed and that the relief prayed for therein be in all things denied and that they go hence with their costs and without day.

E. S. Ratliff, Attorney for Defendants.

[fol. 23] EXHIBIT "A" TO MOTION TO DISMISS AND ANSWER

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

No. 7308

In re the Application of THE FARMERS COOPERATIVE GIN COMPANY OF BOKCHITO, OKLAHOMA, for a License to Operate a Cotton Gin Utility at Bokchito, Oklahoma

Notice of Appeal and Application for Supersedeas

Comes now B. E. Garrett, Joe T. Riddle, W. B. Abernathy, A. W. Chesnut, doing business under the firm name and style of Farmers Independent Gin Company of Bokchito, Oklahoma, as respondents, and respectfully show that they feel themselves aggrieved by the order of the Commission, made and entered in the above entitled cause or proceeding on the 16th day of April 1926, and to which order, the respondents have only received notice on this the 19th day of April 1926, and respondents give notice to the said Commission of its intention to appeal from the said order, granting to the said Farmers Cooperative Gin Company, a corporation, of Bokchito, Oklahoma, a license to construct and operate a gin utility at Bokchito, Oklahoma, to the Supreme Court of the State of Oklahoma.

The grounds of the said appeals are as follows:

I

That the Corporation Commission erred in holding that under the proviso of Section 3714 C. O. S. 1921 (Section 2 Chap. 109, Session Laws 1925) the Corporation Commission had no authority or jurisdiction to inquire into or hear evidence or to require a showing as to the necessity for or convenience of a cotton gin utility to any locality or as to the responsibility, reliability, qualification or capacity of the petition for a permit or license for the construction and operation of a cotton gin utility who present a petition [fol. 24] for the establishment of the said gin utility signed by one hundred (100) citizens and taxpayers of the community where the gin is to be located, and in granting the Farmers Cooperative Gin Company, a corporation, of

Bokchito, Oklahoma, a license to construct and operate a third ginning utility at Bokchito, Oklahoma, without making a showing of any kind or nature, that such additional gin is a needed utility and that the proposed corporation was responsible or reliable as is required to all other persons and corporations desiring a license to engage in such business.

II

That the Corporation Commission erred in sustaining the objection of the attorney for the said applicant, the Farmers Cooperative Gin Company of Bokchito, to the introduction of evidence offered on behalf of the respondents in support of the written objections and protests herein to the granting of the said license to the applicant herein.

III

That the proviso of the said Section 3714, C. O. S. 1921, wherein it is provided "that on the presentation of a petition for the establishment of a gin to be run cooperatively, signed by one hundred (100) citizens and tax payers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin", is unconstitutionad and void, being in violation of the Fourteenth Amendment to the Constitution of the United States at Sections 6 and 7 of Article 2 of the Constitution of the State of Oklahoma, in that the making of the said order of the Commission thereunder authorizing the construction and operation of the said gin utility in Bokchito, Oklahoma, operates to deprive the respondents of their said property without due process of law and depriving the respondents of the equal protection of the law.

IV

That the order of the Commission is contrary to the evidence.

V

That the said order is contrary to law.

The respondents respectfully request the Commission to make and certify the record in this case for transmission to a filing in the Supreme Court of the State of Oklahoma

and further pray the Commission to grant a supersedeas herein and to fix the amount of the bond superseding and suspending the effectiveness of the said order pending the termination of this appeal.

Lydick & McPherson, Attorneys for Respondents.

[fol. 25] State of Oklahoma,
Oklahoma County, ss:

I, Fred Riseling, Acting Secretary for the Corporation Commission of the State of Oklahoma, do hereby certify that I am the custodian of the records and files of the dockets and official files of the Corporation Commission of the State of Oklahoma and that the within and foregoing is a true and correct copy of the notice of appeal and application of supersedeas in re application of the Farmers Co-operative Gin Company of Bokchito, Oklahoma for a license to operate a cotton gin utility at Bokchito, Oklahoma.

Fred Riseling, Acting Secretary. (Seal.)

[fol. 26] Exhibit "B" to Motion to Dismiss and Answer

Before the Corporation Commission of the State of Oklahoma

No. 7308

In re The Application of the Farmers Co-operative Gin Gin Company of Bokchito, Oklahoma, for a License to Operate a Cotton Gin Utility at Bokchito, Oklahoma

Journal Entry

On the 16th day of April, 1926 the Corporation Commission of the State of Oklahoma made and promulgated its Order in the above styled and numbered cause by the terms of which the Farmers Co-operative Gin Company of Bokchito, Oklahoma, was granted and issued a license to construct, maintain and operate a cotton gin utility at Bokchito, Oklahoma.

On April 20th, 1926, B. E. Garrett, Joe T. Riddle, W. B. Abernathy and A. W. Chestnut, doing business under the

firm name of Farmers Independent Gin Company of Bokchito, Oklahoma, filed with this Commission its notice of appeal from said order granting said permit and praying this Commission for a supersedeas staying the effectiveness thereof pending an appeal to the Supreme Court of the State of Oklahoma. Numerous grounds are set forth in said notice and application which are said to be the basis of said appeal among which it is asserted that the Corporation Commission erred in holding that under the proviso of Section 3714, Compiled Oklahoma Statutes, 1921 as amended by Section 2, Chapter 109, Session Laws of 1925, the Corporation Commission has no authority or jurisdiction to inquire into or hear evidence as to the necessity for or convenience of a cotton gin utility in any locality or as to the responsibility, reliability, qualification or capacity of petitioners for such a permit; that the Commission erred in sustaining the objection of the representative of said applicant to the introduction of evidence offered on behalf of the respondents; that the provision of Section 3714, Compiled Oklahoma Statutes of 1921 as amended by Chapter 109 is unconstitutional and void being in violation of the Fourteenth Amendment to the Constitution of the United States and Sections 6 and 7 of Article 2 of the Constitution of the State of Oklahoma in that the making of said order operates to deprive the respondents of their said property without due process of law and depriving them of equal protection of the law; that the order of the Commission is contrary to the evidence; that the order is contrary to law.

Now, on this the 23d day of April, 1926 the Commission having under consideration said notice of appeal and the application for supersedeas and having given due consideration to all the matters and things pertaining thereto, it is of the opinion and finds that said B. E. Garrett, Joe T. Riddle, W. B. Abernathy and A. W. Chestnut doing business under the name of Farmers Independent Gin Company of Bokchito, Oklahoma, should be allowed to take their appeal from the order of the Commission to the Supreme [fol. 27] Court of the State of Oklahoma and that a true and complete transcript of all proceedings had in said matter before the Commission should be prepared, certified

to and transmitted to the Supreme Court for use by said court in said appeal.

The Commission is further of the opinion and finds that the application made by said Farmers Independent Gin Company for a supersedeas staying the effectiveness under the terms of said order should be denied.

Therefore, it is the order of the Commission, premises considered, that B. E. Garrett, Joe T. Riddle, W. B. Abernathy and A. W. Chesnut doing business as Farmers Independent Gin Company of Bokchito, be and they are hereby allowed their appeal from said order of the Commission to the Supreme Court of the State of Oklahoma.

It is the further order of the Commission that a true and correct transcript of all proceedings had before the Commission in such matter be prepared, certified to and transmitted to the Supreme Court to be used by that Court in said appeal.

It is the further order of the Commission that the application for supersedeas made herein staying the effectiveness of said order be and it is hereby denied.

Done at Oklahoma City, this the 23d day of April 1926.

Corporation Commission of Oklahoma. Fred Capshaw, Chairman. F. C. Carter, Commissioner. E. R. Hughes, Commissioner.

Attest: Fred Riseling, Acting Secretary.

[fol. 28] STATE OF OKLAHOMA,
Oklahoma County, ss:

1. Fred Riseling, Acting Secretary for the Corporation Commission of the State of Oklahoma, do hereby certify that I am the custodian of the records and files of the dockets and official files of the Corporation Commission of the State of Oklahoma and that the within is a true and correct copy of the Journal Entry promulgated by the Corporation Commission of the State of Oklahoma on the 23d day of April. 1926 allowing the appeal from the order of the Commission in Cause No. 7308 in re the application of the Farmers Co-operative Gin Company to Bokchito, Oklahoma for license to operate a cotton gin utility at Bokchito, Oklahoma and ordering a transcript of all proceedings had therein to be prepared, certified to and trans-

mitted to the Supreme Court of the State of Oklahoma to be used by that court on said appeal.

Fred Riseling, Acting Secretary. (Seal.)

[fol. 29] EXHIBIT "E" TO MOTION TO DISCUSS AND ANSWER

Corporation Commission of Okla., Cotton Gin Dept.
Received Feb. 3, 1926.

Articles of Incorporation of Co-operative Gin Corporation

Know all men by these presents; that we, whose names are hereto subscribed do hereby associate ourselves together for the purpose of forming a co-operative corporation under the provisions of the laws of the State of Oklahoma, and for that purpose state:

First

The name of this corporation shall be Durant Co-operative Gin Company.

Second

The purposes for which this corporation is formed are as follows:

(a) To handle co-operatively and collectively the problems of ginning, grading, handling, processing, storing, shipping, warehousing and marketing cotton and cotton products.

(b) To engage in any activity in connection with the ginning, grading, handling, processing, storing, shipping, warehousing and marketing of cotton or cotton products and in the financing of any such operations;

(c) To purchase and sell any cotton, cotton seed or cotton products and to purchase and sell machinery equipment or supplies used in any of the above mentioned activities by said corporation;

(d) To borrow money; to endorse, guarantee the payment of or secure in any way, commercial paper or negotiable instruments used or needed in the course of its activity as such corporation;

(e) To sell, issue, discount, or borrow money upon, any commercial paper or negotiable instruments, or promissory notes or warehouse receipts, or mortgages, or bonds, or any other kind of property or security owned by or under the control of said corporation;

(f) To purchase, or otherwise acquire, and to hold, own, exercise all rights of ownership, sell, transfer or pledge shares of the capital stock, or bonds, or securities of any corporation or association engaged in the ginning, grading, handling, processing, shipping, warehousing or marketing of cotton or cotton products;

(g) To buy, own, lease, contract for the use of and ex- [fol. 30] ercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of said corporation;

(h) To acquire, own or develop any interest in patents, trademarks or copyrights deemed necessary in the proper conduct of the business of the corporation.

(i) To do each and everything, necessary, suitable or proper in the judgment of the Directors of said corporation, anywhere throughout the world, for the accomplishment of any of the purposes or attainment of any one or more of the objects herein enumerated or which shall at any time appear conductive to or expedient for the interests or benefits of this corporation and pursuant thereto, to enter into any and all contracts deemed necessary by the Board of Directors for the furtherance of any of the purposes for which this corporation is formed.

Third

The principal place of business of this corporation shall be at Durant, in the County of Bryan, State of Oklahoma.

Fourth

The term for which this corporation shall exist shall be twenty (20) years.

Fifth

The capital stock of this corporation shall be $40,000.00 divided into 4000 shares of $10.00 each.

Sixth

No person, firm or corporation may at any time hold more than 5% nor more than Five Hundred ($500.00) Dollars worth, par value, of said stock.

Seventh

There shall be five (5) Directors of this corporation, and the following named shareholders shall constitute a Board of Directors until the first annual meeting of the stockholders and until their successors are elected and qualified.

C. E. Thornley, Pres. of Durant. R. 3. Okla. shares 10.

G. C. Jones, V. Pres. of Durant. R. 1. Okla. shares 10.

E. C. White, Sec. Treas. of Durant. R. 3. Okla. shares 10.

[fol. 31] P. H. Harville of Durant. R. 2. Okla. shares 5.

Mart Love of Calera, shares 10.

Eighth

The voting power of stockholders shall be one vote for each individual stockholder, irrespective of the amount of capital stock held by such stockholder.

In Witness Whereof, we have hereunto subscribed our names, this 2nd day of Feb., 1926.

C. E. Thornley, G. C. Jones, E. O. White, P. H. Harville, Mart Love.

[fol. 32] State of Oklahoma,
Bryan County, ss:

Before me, a Deputy Court Clerk within and for said County and State, and on this 2 day of Feb., 192—, personally appeared C. E. Thornley, G. C. Jones, E. O. White, P. H. Harville, Mart Love, to me well known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

Florence Worthys, Deputy Court Clerk. My commission expires —— — ——. (Seal.) Court Clerk, Bryan County, Oklahoma.

[fol. 33] EXHIBIT "D" TO MOTION TO DISCUSS AND ANSWER

Cause No. 7232. 4-14-26. Ex. 2, P-14

Durant, Oklahoma, March 27, 1926.

Known all men by these presents, that I, E. O. White Secretary Treasurer of the Durant Co-operative Gin Company of Durant Oklahoma, do solemnly swear that the list ther-to attached consisting of 112 names, is a true and correct list of the Stock-holders of the above Gin Company.

E. O. White, Sec.

Subscribed to and sworn to before me this 27 day of Mar. 1926. J. Walter Mills, County Clerk. My commission expires ——— ——. (seal.)

[fol. 34] Corporation Commission of Okla. Cotton Department. Received April 3, 1926.

Name	Address	Route
C. E. Thornley	Durant, Okla.	3
E. O. White	Durant, Okla.	3
G. C. Jones	Durant, Okla.	1
B. M. Duncan	Roberta, Okla.	
A. S. Tucker	Durant, Okla.	1
J. D. Oliphant	Durant, Okla.	
P. L. Harville	Durant, Okla.	2
S. S. Park	Durant, Okla.	1
Mart Love	Calera, Okla.	3
T. A. Stanford	Durant, Okla.	3
G. S. Simpson	Roberta, Okla.	
W. H. Acord	Durant. Okla	2
C. H. Mead	Durant, Okla.	2
W. E. Foster	Roberta, Okla.	
N. J. Park	Durant, Okla.	3
H. C. Harp	Durant, Okla.	1
J. E. Pickens	Durant, Okla.	1
W. C. Towne	Durant, Okla.	1
J. T. Harmon	Durant, Okla.	3
R. N. Duncan	Durant, Okla.	Silo
B. H. Tassey	Durant, Okla.	2
C. R. Colclasure	Durant, Okla.	2

Name	Address	Route
J. W. Goodman	Durant, Okla.	2
Ira Rambo	Durant, Okla.	2
W. A. Beal	Durant, Okla.	2
F. F. Miller	Durant, Okla.	2
N. G. Tadlock	Durant, Okla.	2
W. L. Munroe	Durant, Okla.	2
L. R. Riddle	Durant, Okla.	2
T. A. Rambo	Durant, Okla.	2
W. H. Shults	Durant, Okla.	2
W. A. James	Calera, Okla.	1
E. Caughron	Durant, Okla.	3
R. A. Mead	Durant, Okla.	1
J. W. Price	Durant, Okla.	
W. A. Dunn	Durant, Okla.	
N. C. Riddle	Durant, Okla.	1
J. F. Corbin	Durant, Okla.	1
S. B. Robinson	Roberta, Okla.	
T. E. Franklin	Durant, Okla.	1
C. A. Matingley	Durant, Okla.	1
W. F. Perry	Durant, Okla.	1
Edd Ward	Durant, Okla.	1
H. E. Matingley	Durant, Okla.	1
T. J. Corbin	Durant, Okla.	1
H. P. Heath	Durant, Okla.	1
J. E. Williams	Durant, Okla.	1
Bobb Miller	Durant, Okla.	1
J. W. Lynch	Durant, Okla.	1
J. Ben Lewis	Durant, Okla.	3
L. L. Hayworth	Durant, Okla.	3
C. J. Duncan	Durant, Okla.	3R
R. F. Woodward	Roberta, Okla.	
W. L. Prentis	Durant, Okla.	1
J. P. Davalt	Durant, Okla.	1
J. E. Dyer	Utica, Okla.	
A. E. Roberts	Durant, Okla.	1
Jas. M. Murphy	Durant, Okla.	1
B. W. Compton	Durant, Okla.	1
[fol. 35] N. Hines	Utica, Okla.	
W. H. Poff	Utica, Okla.	
J. F. Williams	Roberta, Okla.	

Name	Address	Route
G. W. Lloyd	Roberta, Okla.	
C. M. Tucker	Durant, Okla.	Rt.1
J. B. Andis	Durant, Okla.	1
J. A. Taxton	Durant, Okla.	1
C. G. Woodward	Durant, Okla.	1
S. F. Boatner	Durant, Okla.	1
S. K. McManus	Utica, Okla.	
W. A. Conditt	Durant, Okla.	3
J. M. Murphey	Durant, Okla.	3
G. L. Reinheart	Durant, Okla.	3
E. R. Carter	Durant, Okla.	
C. C. Johnson	Durant, Okla.	3
Fred C. Johnson	Durant, Okla.	3
G. F. Duke 4	Durant, Okla.	2
Frank Buford	Durant, Okla.	
S. G. Boatner	Durant, Okla.	1
J. M. Acord	Durant, Okla.	1
W. H. Acord	Durant, Okla.	1
J. D. Brown	Durant, Okla.	3
Ansel Moore	Durant, Okla.	3
F. E. Sharrell	Roberta, Okla.	
M. M. Smith	Durant, Okla.	1
D. P. Wedge	Durant, Okla.	3
S. D. Sorrell	Durant, Okla.	3
J. B. Childs	Durant, Okla.	3
T. E. Brock	Utica, Okla.	
J. Sam Wright	Utica, Okla.	
W. F. Fisher	Utica, Okla.	
C. C. Davis	Utica, Okla.	
A. T. Patterson	Utica, Okla.	
J. E. McCalib	Utica, Okla.	
W. M. Dillingham	Utica, Okla.	
S. J. Jones	Utica, Okla.	
W. G. Simpson	Durant, Okla.	3
Will Russell	Durant, Okla.	3
J. F. Acord	Durant, Okla.	1
W. M. Roberts	Durant, Okla.	3
J. R. Boston	Durant, Okla.	3
R. C. Carr	Utica, Okla.	
Wm. P. Ellis	Utica, Okla.	

Name	Address	Route
R. P. Williams	Roberta, Okla.	
W. A. Simmons	Roberta, Okla.	
S. S. Aldridge	Durant, Okla.	3
J. O. Carson	Durant, Okla.	3
W. B. Childs	Durant, Okla.	
E. L. Strickland	Roberta, Okla.	
L. M. Linville	Utica, Okla	
L. B. McManus	Durant, Okla.	3
L. J. Williams	Roberta, Okla.	
D. W. Loftis	Utica, Okla.	

[fol. 36] EXHIBIT "E" TO MOTION TO DISMISS AND ANSWER

Durant, Oklahoma, March 27, 1926.

Known all men by these presents , that I, J. A. Moore, by W. T. White, Dep. County Treasurer of Bryan County, Oklahoma, do solemnly swear that the list of 112 names attached hereto are all Tax payers and citizens of Bryan County, Oklahoma.

J. A. Moore, Co. Treas., by W. T. White, Dep.

Subscribed and sworn too before me this the 27th day of Mar., 1926. C. D. Robinson, Notary Public. My Commission Expires Oct. 7, 1929. (Seal.)

Corporation Commission of Okla., Cotton Department. Received April 3, 1926.

[fols. 37-40] *Motion to dismiss and answer, duly sworn to by Fred Capshaw et al. Jurats omitted in printing.*

[fols. 41-48] [File endorsement omitted.]

[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed December 12, 1927

WILLIAMS, J.:

In the bill filed by complainant in this court on April 14, 1926, it is alleged that he is, and was at all times

hereinafter mentioned, engaged in and duly authorized to engage in the operation of a cotton gin in the City of Durant, Oklahoma, under a license duly and regularly issued by the Corporation Commission of the State of Oklahoma under and by virtue of Article IV of Chapter 20, Compiled Laws of Oklahoma of 1923 and by Chapter 109 of the Session Laws of Oklahoma of 1925, and that the defendant, Durant Cotton Gin Company, is a domestic corporation organized under and pursuant to Article XIX of Chapter 34 of the Compiled Statutes of Oklahoma, 1921. That cotton gins are public utilities and the operation of same for the purpose of ginning seed cotton is a public business and that complainant is engaged in public business as such, its said cotton gin being a public utility, and that under and by virtue of Section 3715 of said Chapter and Article the Corporation Commission is vested with the power and charged with the duty of regulating and controlling such cotton gins in all matters relating to the performance of such duties and the charges therefor, with power to fix rates, rules, charges and regulations to be observed by complainant and all others operating gins in the State of Oklahoma and that by virtue of Section 3717 of said Chapter and Article said Corporation Commission is vested with the power to enforce its orders against any person, firm, company or corporation maintaining or operating a gin or gins by imposing fines against him or them for the violation of any of its said orders, and that under the provisions of Section 3713 of said Chapter and Article no person or persons or corporations in the State of Oklahoma are permitted to maintain and operate a gin for the purpose of ginning seed cotton, without first having secured a license for such purpose from said Corporation Commission; that by virtue of Section 3714 of said Chapter and Article as amended by Chapter 109 of the Session Laws of 1925 all persons and corporations are prohibited from constructing or installing, and the Corporation Commission is prohibited from licensing, any new gin plant until satisfactory showing shall have been made to the Corporation Commission setting forth that such gin is a needed utility and that the proposed corporation, company, firm or individual is a competent and desirable corporation, company, firm or individual to establish and oper-

ate said gin, as may appear in the discretion of said Commission, and that said provisions apply to all persons, firms, corporations and classes of people with the exceptions [fol. 50] hereinafter set forth. That Section 3714, as amended by Chapter 109 of the Session Laws of 1925 contains the following proviso:

"That on the presentation of a petition for the establishment of a gin to be run co-operatively, signed by one hundred citizens and tax payers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin."

It is the contention of said complainant that said proviso violates the Fourteenth Amendment to the Constitution of the United States and for that reason no license should be issued to the Durant Cooperative Gin Company for such purpose.

Said defendants in their joint answer allege that the allegations contained in plaintiff's bill are insufficient in law or equity to constitute a basis for the relief sought, and that the defendant Durant Co-operative Gin Company had filed its application with said Corporation Commission for the establishment of a gin to be run co-operatively at Durant in Bryan County, Oklahoma, under and by virtue of the provisions of said proviso, and further deny that the provisions of said proviso are discriminatory, arbitrary or in any way violative of or contrary to the due process clause or equal protection clause of the Fourteenth Amendment to the Constitution of the United States. They further allege that in the operation of the cotton gins now located in the City of Durant in ginning seed cotton as public utilities, the facts will show that for the year 1924-25 under the rate in effect at that time with the gins operating therein, the gins in which Complainant is interested as owner or stockholder have made excessive profits upon said operation; that Complainant herein in addition to his ownership in what is known as the Mitchell Gin is also an interested owner and stockholder in the co-operative gin of Durant and that the facts and records available disclose that for the ginning season 1924-25 the Mitchell Gin enjoyed a net earning over and above all operating expenses, taxes, and other charges, of 18 per cent. upon the book

value thereof undepreciated; that what is known as the Co-operative Gin — per cent. of the stock of which is owned by Plaintiff, for the ginning season 1924-25 enjoyed a net earning on the book value undepreciated of 153.6 per cent. after allowing all operating expenses including taxes and that the two gins for the same year enjoyed an average net earning after deducting all operating expenses of 85.8 per cent * * * That the cotton production industry including the gathering, picking, ginning, and storing and marketing thereof is a leading agricultural pursuit in so far as values are concerned within the State of Oklahoma; that the ginning, marketing and processing of said product is one that is subject to continual abuse in that a large proportion of the gins in the State of Oklahoma have been constructed and are operated by those persons who are also interested in the purchase of cotton-seed extracted from the cotton as well as in the purchase of the staple after it is ginned and processed for marketing; that such concerns as are engaged with cotton-seed business as well as the cotton buying business and also operating gins in connection therewith have an advantage amounting to a virtual monopoly of such products within the State of Oklahoma. That the State of Oklahoma through legislative enactments throughout the past has by the adoption of legislation designated to foster and encourage agriculture, enacted statutes permitting all persons as well as those engaged in agriculture and horticulture to organize for the purpose of conducting agricultural, dairy, live stock irrigation, horticultural, mercantile, manufacturing, mechanical, and industrial business upon a co-operative plan; that pursuant to said policy of the Legislature of the State of Oklahoma has enacted two statutes, the first of which enacted by the 1917 Session of the Legislature of the State of Oklahoma and effective June 14, 1917, is found in Article XVI Chapter 34, Compiled Oklahoma Statutes 1921 and provides that co-operative agricultural or horticultural associations instituted for the purpose of mutual help and not having capital and stock and not conducted for profit may be [fol. 51] formed under the provisions of this act by any number of persons, not less than five, to engage in agriculture or horticulture. It outlines the provisions which are to be incorporated in the articles of association, the powers

of such associations, the admission of members into the Association, the manner and way in which the business of such concern may be operated, all of which is for the mutual benefit and for the purpose of rendering services described in its articles of association to membership only, this act is strictly and distinctly non-profit, mutual, self-help organization and is clearly distinguishable in every material respect from the ordinary private corporation organized for profit. The second statute, adopted by the Session of the Legislature of 1919 and approved April 4, 1919, provides that ten or more persons may form a corporation for the purpose of conducting an agricultural, dairy, live stock, irrigation, horticultural, mercantile, mining, manufacturing, mechanical or industrial business upon a co-operative plan and with their associates, successors and assigns may become and be a body politic and corporate by complying with the provisions of this act. This act as amended by the Legislature of 1923 as shown by Chapter 167, Session Laws 1923, authorizes ten or more persons who may so desire to incorporate co-operatively to engage in the enterprises and the businesses set forth in the first section thereof. The act provides in detail the requisites for articles of incorporation, the way and manner in which said articles may be amended, the powers to be exercised by said corporations, the amount of stock to be held and that no stock shall be sold at less than par value, that 20 per cent. of the par value of the stock subscribed for shall be paid in before the corporation commences business, and that no certificate of stock shall be issued to any person until the full amount of the subscription thereof shall have been paid, that no person shall become a shareholder except by consent of the Board of Directors and that not more than 5 per cent. of the stock outstanding at any time and not more than $500.00 in par value shall be held by or for one person, firm or corporation; that each shareholder or subscriber shall only be entitled to one vote and no more, irrespective of the number of shares owned; that if the indebtedness at any time of the corporation shall exceed the amount of its subscribed capital stock and surplus, the Directors assenting thereto shall be personally and individually liable for such excess to the creditors except for indebtedness

created in favor of the state warehouse revolving fund. Section 5648 of said chapter provides for the apportionment in the handling of the profits and earnings of such associations from time to time not less than once in each year and imposing the following requirements:

"(1) Not less than ten per cent thereof accruing since the last apportionment shall be set aside in a surplus or reserve fund until such fund shall equal at least fifty per cent of the paid up capital stock.

"(2) Dividends at a rate not to exceed eight per cent per annum, may, in the discretion of the directors, be declared upon the paid up capital stock. Five per cent may be set aside for educational purposes.

"(3)The remainder of such net earnings and profits shall be apportioned and paid to its members ratably upon the amounts of the products sold to the corporation by its members, and the amounts of the purchasers of members from the corporation; provided, that if the by-laws of the corporation shall so provide the directors may apportion such earnings and profits in part to non members upon the amounts of their purchases and sales from or to the corporation."

It is further pleaded in said answer that with respect to the classification made by the Legislature of the State of Oklahoma as to co-operative concerns engaged in the ginning of cotton as public utilities that a like distinction has been made by the Congress of the United States in various acts of legislation, the latest instance being in the Federal Revenue Act of 1921, which, by Section 231, expressly dis-
[fol. 52] tinguishes and classifies such organizations and associations by exempting them from the payment of income taxes. It is further specifically pleaded in said answer that the defendant Durant Co-operative Gin Company is a co-operative corporation duly organized, a copy of the articles of incorporation being attached thereto as a part thereof and designated as Exhibit "C". Said by-laws recite that said corporation is formed for the following purposes:

(a) To handle co-operatively and collectively the problems of ginning, grading, handling, processing, storing,

shipping, warehousing and marketing cotton and cotton products.

(b) To engage in any activity in connection with the ginning, grading, handling, processing, storing, shipping, warehousing and marketing of cotton or cotton products and in the financing of any such operations.

It further provides that no person, firm or corporation may at any time hold more than 5% nor more than $500 worth, par value, of said stock. And further:

"The voting power of stockholders shall be one vote for each individual stockholder, irrespective of the amount of capital stock held by such stockholder."

It is further alleged that said corporation is composed of 112 cotton growers, citizens and taxpayers of Bryan County, Oklahoma, as shown by a certificate of the secretary thereof, under oath, attached hereto and made a part hereof and marked Exhibit "D", who have associated themselves for the purposes disclosed by said articles of incorporation, under the terms of said statute; that the petition submitted to the Corporation Commission as a basis for action by it in the granting of a license or permit to engage in cooperative ginning, which gave rise to this cause of action, is signed by the 112 stockholders who are also citizens and taxpayers of Bryan County, Oklahoma, as is disclosed by a certificate from the County Treasurer of Bryan County, Oklahoma, which certificate is attached hereto and made a part hereof and marked Exhibit "E". It is further averred that the Durant Co-operative Gin Company has provided by its by-laws for the apportionment of earnings and profits of said association to non-members who may patronize said corporation on the amount of gin patronage shown by the books of the corporation. It is further averred that the citizens and taxpayers associating themselves together in the corporation aforesaid, were authorized by the terms of the statute of the State of Oklahoma passed in 1917 and contained in Chapter 16 of said Article 34, in a non-profit non-stock association for the purpose of rendering service to the members of said association solely, and said defendant Durant Cooperative Gin Company now alleges and avers that in case it is found impracticable or illegal for it to organize under the terms of the 1919 statute that it will organize and operate as an

association under the terms of the 1917 act as a non-profit, purely cooperative and mutual association for the purpose of rendering service to its membership only, either of which organizations defendants allege and aver come within the amendment to the cotton ginning statute of 1925, providing for the licensing by the Corporation Commission of gins "to be run cooperatively."

Parties stipulate that complainant is engaged in the cottton ginning business under the name of Mitchell Gin Company owning said gin in the City of Durant, Oklahoma, same being operated by virtue of a license issued by the Corporation Commission under and by virtue of Article 40, Chapter 7, statutes 1921 as amended by Chapter 191 Session Laws of Oklahoma, 1923, and by Chapter 109 Session Laws of Oklahoma, 1925, and that Fred Capshaw, Frank Carter and C. C. Childers are the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma, and that Edwin Dabney is the Attorney General of the State of Oklahoma, and that the amount in controversy, exclusive of interest and costs, exceeds the sum of $3000; the the Durant Co-operative Gin Company in 1926 filed its application with the Corporation [fol. 53] Commission for permission to establish a gin at Durant, Oklahoma; that complainant protested in writing against the issuance of a license or permit by the said Commission to the said Durant Co-operative Gin Company; that the articles of incorporation of said Durant Co-operative Gin Company are as follows:

"First

"The name of this corporation shall be Durant Co-operative Gin Company.

Second

"The purposes for which this corporation is formed are as follows:

"(a) To handle cooperatively and collectively the problems of ginning, grading, handling, processing, storing, shipping, warehousing and marketing cotton and cotton products.

"(b) To engage in any activity in connection with the ginning, grading, handling, processing, storing, shipping,

warehousing and marketing of cotton or cotton products and in the financing of any such operations;

(c) To purchase and sell any cotton, cotton seed or cottton products and to purchase and sell machinery equipment or supplies used in any of the above mentioned activities by said corporation;

(d) To borrow money; to endorse, guarantee the payment of or secure in any way, commercial paper or negotiable instruments used or needed in the course of its activity as such corporation;

(e) To sell, issue, discount, or borrow money upon any commercial paper or negotiable instruments, or promissory notes or warehouse receipts, or mortgages, or bonds, or any other kind of property or security owned by or under the control of said corporation;

(f) To purchase, or otherwise acquire, and to hold, own, exercise all rights of ownership, sell, transfer or pledge shares of the capital stock, or bonds, or securities of any corporation or association engaged in the ginning, grading, handling, processing, shipping, warehousing or marketing of cotton or cotton products;

(g) To buy, own, lease, contract for the use of and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of said corporation;

(h) To acquire, own or develop any interest in patents, trademarks or copyrights deemed necessary in the proper conduct of the business of the corporation.

(i) To do each and everything, necessary, suitable or proper in the judgment of the Directors of said corporation, anywhere throughout the world, for the accomplishment of any of the purposes or attainment of any one or more of the objects herein enumerated or which shall at any time appear conducive to or expedient for the interests or benefits of this corporation and pursuant thereto, to enter into any and all contracts deemed necessary by the Board of Directors for the furtherance of any of the purposes for which this corporation is formed.

[fol. 54] Third

The principal place of business of this corporation shall be at Durant, in the County of Bryan, State of Oklahoma.

Fourth

The term for which this corporation shall exist shall be twenty (20) years.

Fifth

The capital stock of this corporation shall be $40,000.00, divided into 4,000 shares of $10.00 each.

Sixth

No person, firm or corporation may at any time hold more than 5% nor more than Five Hundred ($500.00) Dollars worth, per value, of said stock.

Seventh

There shall be five (5) Directors of this corporation, and the following named shareholders shall constitute a Board of Directors until the first annual meeting of the stockholders and until their successors are elected and qualified.

C. E. Thornely, pres., of Durant, R. 3 Okla. shares, 10.
G. C. Jones V. pres., of Durant, R. 1, Okla.; shares, 10.
E. O. White, Sec. Treas. of Durant, R. 3, Okla.; shares 10.
P. H. Harville, of Durant, R. 2 Okla.; shares 5.
Mart Love of Calera; shares, 10.

Eighth

The voting power of stockholders shall be one vote for each individual stockholder, irrespective of the amount of capital stock held by such stockholder."

The sole objection made before the State Corporation Commission to the issuance of the license or permit was on the ground that the act under which it was sought was unconstitutional as violating the Federal Constitution, and that is the ground under which a writ of injunction is here sought. On the presentation of a petition for the establish-

ment of a gin to be run co-operatively, signed by 100 citizens and tax payers of the community in which the gin is to be located the said commission is to issue a license. Prior to enactment of the act of 1917 gins were operated by an individual, co-partnership or a corporation, no permit or license of any character being required. Since passage of act of 1917 a gin may be owned and operated by an individual, co-partnership or a corporation when necessity therefor is found by the Corporation Commission. Act of 1925 continues such practice except as provided in said proviso, it having effect of classifying the gin business and such gins as come within the class referred to in said proviso may operate without the necessity therefor being found and determined by the Corporation Commission. That the gin is "to be run co-operatively" and vouched for by a petition signed "by 100 citizens and taxpayers in the community where the gin is to be located", is all that is required. The legislature of the state has enacted two separate statutes authorizing the organization of co-operative concerns. Article 16, Chapter 34, Compiled Oklahoma Statutes, 1921, relates to agricultural and horticultural associations. Section 5599 thereof provides:

"Co-operative agricultural or horticultural associations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, may be formed, under the provisions of this act, by any number of persons, not less than five, engaged in agriculture or horticulture."

[fol. 55] Said act, as amended by Chapter 181, Session Laws 1923, (page 309) provides as follows:

"Any number of persons, not less than five, engaged in the production of agriculture or horticultural products may act together and organize co-operative associations, not having capital stock and not conducted for profit, for mutual help in collectively processing, preparing for market, picking, storing, shipping, handling, and marketing such products of persons so engaged; and the manufacturing or the making of the by-products thereof; or in the financing of any of the above activities; and may have marketing agencies in common with other like or similar associations; and such associations and their members may make all necessary contracts and agreements to effect such pur-

poses; and such association may make advances to members, and such members may hire, rent, or buy their farm supplies and machinery from or through the association; Provided, that such association shall be operated for the mutual benefit of the members thereof, only as such producers; and no member of the association shall have more than one vote because of the membership capital he may own therein; and such associations shall not pay dividends on membership capital in excess of eight per centum per annum. And co-operative associations, not having capital stock, now, existing in Oklahoma, exercising, or attempting to exercise, corporate rights and powers, or to perform duties as a corporation, for the purpose or any of the purposes aforesaid, are hereby validated, and are granted all of the rights and powers, and subjected to all of the restrictions and limitations of this Act, as herein amended; and are granted for the enforcement of existing as well as subsequent contracts, all of the rights and remedies herein provided."

Under this statute a co-operative gin may be organized by its growers and producers and operated for purpose of ginning seed cotton, preparing for market such cotton and seed, and the manufacturing of by-products thereof. A gin "to be operated co-operatively" is a classification different from the ordinary commercial gin for which an adjudication of necessity therefor is required. Such class acting in such a co-operative way in ginning and marketing their own agricultural products in preparing their own cotton and seed and products thereof for market is a reasonable classification and not violative of the Fourteenth Amendment.

As to said proviso for the issuance of license for gins "to be operated co-operatively" if two constructions equally reasonable may be reached, one rendering the proviso violative of the constitution and the other valid, that should be adopted which would permit it to stand, the presumption being that the legislature intended that which was permissible and valid and therefore in using the term "to be operated co-operatively" intended that such gin should be organized and operated under the co-operative act as contained in Article 16, Chapter 34, Compiled Oklahoma Statutes annotated 1921 and amendments thereto.

In American Sugar Refining Co. v. Louisiana, 179 U. S., 89, an act was involved providing for the licensing for the carrying on of business of refining sugar and molasses, the annual tax on such license to be based on the gross annual receipts of all persons, associations of persons or business firms and corporations engaged in said business, with the proviso that said section shall not apply to planters and farmers grinding and refining their own sugar and molasses, and further providing that it shall not apply to those planters who granulate syrup for other planters during the rolling season. In the opinion it is said:

[fol. 56] "The constitution of Louisiana classifies the refiners of sugar for the purpose of taxation into those who refine the products of their own plantations, and those who engage in a general refining business, and refine sugars purchased by themselves or put in their hands by others for that purpose, imposing a tax only upon the latter class. To entitle a party to the exemption it must appear (1) that he is a farmer or a planter: (2) that he grinds the cane as well as refines the sugar and molasses; (3) that he refines his own sugar and molasses, meaning thereby the product of his own plantation. Whether he may also refine the sugar of others may be open to question; although by its express terms the act does not apply to planters who granulate syrup for other planters during the rolling season. The discrimination is obviously intended as an encouragement to agriculture, and does not deny to persons and corporations engaged in a general refining business the equal protection of the laws."

(See also Citizens Tel. Co. v. Fuller, 229 U. S., 327.)

In Fidelity Mutual Life Association v. Mettler, 185 U. S. 326, it is said:

"The ground for placing life and health insurance companies in a different class from fire, marine and inland insurance companies is obvious, and we think that putting them in a different class from mutual benefit and relief associations doing business through lodges, and benevolent associations of the character mentioned in the Texas statutes, is not an arbitrary classification, but rests on sufficient reason. The legislature evidently intended to distinguish

between life and health insurance companies engaged in business for profit (and we are not called on to refine as to the distribution of such profits), and lodges and associations of a mutual benefit or benevolent character, having in mind also the necessity of the prompt payment of the insurance money in very many cases in order to provide the means of living of which the beneficiaries had been deprived by the death of the insured."

In German Alliance Ins. Co. v. Lewis, 233 U. S. 389, it is said:

"The provision of the statute is: 'That nothing in this act shall effect farmers' mutual insurance companies, organized and doing business under the laws of this State, and insuring only farm property.' The distinction is therefore between co-operative insurance companies insuring a special kind of property and all other insurance companies. It is only with that distinction that we are now concerned. There are special provisions in the statute of Kansas for the organization of co-operative companies, and if the statute under review discriminates between them the German Alliance Company cannot avail itself of the discrimination. A citation of cases is not necessary, nor for the general principle that a discrimination is valid if not arbitrary, and arbitrary in the legislative sense, that is, outside of that wide discretion which a legislature may exercise. A legislative classification may rest on narrow distinctions. Legislation is addressed to evils as they may appear, and even degrees of evil may determine its exercise. Ozan Lumber Co. v. Union County Nat. Bank, 202 U. S. 623, 50 L. Ed. 1176, 26 Sup. Ct. Rep. 768. There are certainly differences between stock companies, such as complainant is, and the mutual companies described in the bill, and a recognition of the differences we cannot say is outside of the con- [fol. 57] stitutional power of the legislature. Orient Ins. Co. v. Daggs, 172 U. S. 557, 32 L. Ed. 552, 19 Sup. Ct. Rep. 281."

In the case of Dark Tobacco Growers Co-op. Asso. et al. v. Dunn (Ky.) 266 S. W. 308, it is said:

"We are impressed with the idea that co-operative marketing of farm products is an economic necessity. It was

as a legislative body, in reviewing the action of the Corporation Commission, the duty of this court is marked out in the Constitution, and that is to determine whether or not such order appealed from was reasonable, just, and correct, supported by the prima facie presumption in favor of the action of the commission that it is reasonable and just."

[fol. 60] The Corporation Commission under the Constitution of Oklahoma in the performance of its functions exercises judicial, executive and legislative duties and when an appeal is prosecuted from that body to the Supreme Court that court in reviewing such appeal sits in the same capacity. When it has acted in such review then the aggrieved party may institute an action in any court having jurisdiction to annual such order as may be finally entered by the Supreme Court sitting in such like capacity. (See Pioneer Tel. & Tel. Co. v. State, 40 Okla. 417.)

As between a person, individual, firm or corporation engaged in ginning seed cotton commercially for profit and a co-operative organization licensed under act of 1919 engaged in the ginning of seed cotton the following distinctions as to such corporations are noted: Section 5301, Compiled Statutes 1921 provides:

"Private corporations may be formed by the voluntary association of three or more persons upon complying with the provisions of this chapter, for the following purposes, namely: Mining, manufacturing, and other industrial pursuits; * * *"

Section 5304 provides that the article of incorporation for such corporation shall set out; 1st. name of the corporation; 2nd. The purpose for which it is formed; 3rd. Place where its principal business is to be transacted; 4th term for which it is to exost; 5th number if directors; 6th amount of capital stock and number of shares, and such corporation shall have the power to create two or more classes of stock with such designations, preferences and voting powers, restrictions or qualifications thereof as shall be stated in such articles; provided, that the holder of no stock shall be prohibited from voting upon all questions pertaining to the increasing of capital stock or bonded indebtedness of the corporation. Any and all classes of preferred stock may, if desired, be made subject to re-

demption, etc. And the holder of any preferred stock shall be entitled to receive and the corporation shall be bound to pay him dividends at such rates and on such conditions and at such times as may be stated, and that after the dividends on the preferred stock have been paid then dividends may be paid on the common stock out of any remaining surplus. No amount of capital stock is required to be paid in before commencing business. (See Sec. 5316 Statutes, 1921.)

Corporations organized under the act of 1919 belong to a separate and distinct class from such ordinary private corporations ten or more persons being required to associate themselves together to form such corporation and not less than 20% of the value of the stock must be paid in before business is commenced, and no person may become a stockholder under the act of 1819 except by consent of the board of directors and not more than 5% of the stock and not more than $500.00 of the paid up stock can be owned by any one person, while in the ordinary private corporation all the stock may be owned by one person except enough to qualify for board of directors, and under the act of 1919 the voting rights of the stockholders are restricted to one vote for each stockholder, regardless of the amount of stock or interest possessed by such stockholder. In the ordinary private corporations in the same business the right to vote is determined by the amount of stock, one vote for each share of stock held by such stockholder. Under act of 1919, Sec. 5647, Article 19, Compiled Oklahoma Statutes, 1921, it is provided:

[fol. 61] "If the indebtedness of such corporation shall at any time exceed the amount of its subscribed capital stock and surplus, the directors assenting thereto shall be personally and individually liable for such excess to the creditors."

Under statutes relating to ordinary corporations no such liability is prescribed, the only liability of a stockholder is the amount of his stock. When stock is paid up no further liability exists as to a stockholder except in cases of fraud. When not paid up he would be liable to pay in his subscribed capital stock to meet the indebtedness of the concern.

Section 5649 of the act of 1919 further provides:

"If the directors of such corporation shall declare and pay any dividend or apportionment of earnings, or profits to members or non-members when the corporation is insolvent or when it would be rendered insolvent by such payment, such directors shall be jointly and severally liable for all debts of the corporation then existing and for all such debts as shall be thereafter incurred while they shall respectively continue in office. Any director may relieve himself from such liability at any time before the time fixed for the payment of such dividend or apportionment by filing a certificate in writing of his ojection with the secretary of the corporation, and with the county clerk of the county in which the principal office is located."

Section 5650 further provides:

"At the time of each dividend or apportionment of profits and at least once in every year, the directors shall cause to be prepared a statement showing the financial condition of the corporation at the end of the period to which such dividend or apportionment relates, in such form as shall fully exhibit the assets and liabilities of the corporation; its earnings and profits, purchases and sales, expenses and outlays, for the period covered by such dividend or apportionment, in such manner that a good understanding of the condition of the company, may be obtained from such statement, and shall cause such statement to be kept on file with the secretary where the same may be examined by any member of the corporation at all reasonable times."

No dividend could be declared except upon the paid up capital stock and then not in excess of 8% thereof, and 5% may be set aside for educational purposes. No member of person shall hold more than $500.00 or more than 5% of the outstanding stock. (Sec. 5642, Statutes 1921.) Sec. 5648, Paragraph 3, further provides:

"The stock of such corporation shall not be sold at less than its par value. Twenty per cent of the par value of the stock subscribed for shall be paid in before the corporation shall commence business, and the remainder of such subscriptions shall be paid from time to time upon call of the directors. No certificate of stock shall be issued

to any person until the full amount of the subscription therefor shall have been paid. No persons shall become a shareholder except by consent of the board of directors. Not more than five per cent of the stock outstanding at any time, and not more than five hundred dollars in par value, shall be held by or for one person, firm or corporation."

[fol. 62] What does "To be run co-operatively" mean "Co-operative" is defined by Mr. Webster as "One who practices co-operation; a member of co-operative society." "Co-operative agricultural or horticultural associations, instituted for mutual help, * * * may be formed * * * by any number of persons, not less than three, engaged in agriculture." Sec. 5599. Statutes 1921. "Ten or more persons may form a corporation for the purpose of conducting an agricultural * * * business upon a co-operative plan * * * * " Sec. 5637 Statutes, 1921. The word "co-operative" may not be used except by corporations organized under Article 19, Chapter 34, but associations or corporations organized under Article 16, Chapter 34, for co-operative purposes also may use a name which includes the word "co-operative" but shall have no capital stock (See Sec. 5601 paragraph A, Stats. 1921) but expenses and necessary funds are to be raised as provided in Section 5614 which is as follows:

"An association may provide for the payment of expenses, necessary in the performance of its service to its members, by the creation of a working fund or otherwise, through fees, dues, assessments, or charges for the services, to be fixed and collected in such manner as may be prescribed in the by-laws. Such fees, dues, assessments, or charges shall be limited to the amounts necessary to meet expenses already incurred, or reasonably estimated as essential to be incurred, by the association in conducting its operations. Whenever any association shall find that it has accumulated funds in excess of those necessary to meet expenses already incurred, or reasonably estimated as essential to be incurred, by it in conducting its operations it shall return such excess to, or deduct it from future fees, dues, assessments, or charges of members who contributed to such excess, in the proportions of their respective contributions."

The purpose of these two acts as contained in Chapter 34, Articles 16 and 19, is to promote co-operative action among those engaged in agricultural pursuits and matters relating and pertaining to those so engaged for mutual benefit, rather than for general commercial gain or profit. The plan under Article 19, Chapter 34, contemplates financial aid in a small way by not restricting stock membership to those engaged in agriculture, extending such opportunity to everybody until such financial need for co-operative business is met. Such plan does not contemplate unusual profits on such investment to anyone, as the total annual dividend on the paid up stock is restricted to 8%, whilst the highest legally permitted annual rate of interest in this state is 10%. Any reserve after annually setting aside not less than 10% for surplus until a fifty per cent. surplus fund is accumulated, and 5% annually for educational purposes, obviously to promote co-operative organizations among farmers, etc., and 8% dividend on paid up capital stock if it is then available, the ramainder of the net earnings are annually to be paid to its members ratably, not upon the amount of their paid up capital stock, but upon the amount of the products sold or furnished to the corporation by its members and purchased by them from it, and in this case also to the non-members upon amounts of purchases and sales from or to the corporation. A stockholder who was not a patron of the gin either by furnishing or selling to it seed cotton or buying cotton or seed from it, could never realize more than 8% annually on his investment, but has his paid up stock membership under such conditions for the purpose of promoting agriculture by furnishing a small sum of capital for farmers to install and operate their own gins in a co-operative way.

These two plans appear to be comprehensive, (1) that under Article 16 by means of which dues and assessments and other funds are to be supplied by the agricultural members of the co-operative or mutual association to finance same, and (2) that under Chapter 19 where outside finan- [fol. 63] cial assistance under the dividend restrictions heretofore noted might be obtained but in a limited way, so that no non-farmer or agriculturist could ever own more than five per cent of the outstanding paid up capital stock and not more than $500.00 of the same, and no stockholder

ever to vote more than one vote at any stockholders meeting. If the indebtedness of such corporation shall at any time exceed the amount of its subscribed stock and surplus the directors assenting thereto are made personally and individually liable for such excess to the creditors. (Sec. 5647.) Where dividends or apportionments of the earnings or profits to members or non-members are made by the directors when such corporation is insolvent, or when it would be rendered insolvent by such payment, such directors are jointly and severally liable for any debts of the corporation then existing and for all such debts as shall thereafter be incurred while they shall continue in office. (Sec. 5649 Stat. 1921.)

It was the evident purpose of the legislature in enacting these two articles to provide in a comprehensive way for co-operative organizations for the handling and marketing of crops of agriculture, that such producers should realize a reasonable value for their crops. Had the legislature confined the shareholders under Article 19 to agricultural producers, but permitted farmers not patrons of the gin to acquire, it would have probably been contended that the act on its face discriminated against other investors in that it permitted farmers who were not intended to be patrons of such co-operative organizations to furnish capital upon which they were to receive maximum dividends at the rate of 8% per annum, when persons of other classes were not eligible to so invest, and with that in mind this limited capital which was to be made available for the purpose of enabling agriculturists to organize and carry on these co-operative concerns in the promotion of agriculture was by the legislature left open to every investor whether a cotton oil corportaion or other private corporation or a firm or individual owning gins or stockholders in such enterprise. To promote, foster and encourage intelligent and orderly marketing of agricultural products through co-operative concerns, under a co-operative plan, eliminating speculation and waste and making the distributor of agricultural products between producer and consumer or manufacturer as direct as can be efficiently done these acts as contained in Chapter- 16 and 19 were passed. Courts will take judicial krowledge of conditions affecting the agricultural interests of the country. Tobacco Growers Co-Operative

Asso. v. Jones, 185 N. C. 265; Liberty Warehouse Co. v. Burley Tobacco Growers Co-Operative Asso. 271 S.W. (Ky.) 695; Minnesota Wheat Growers Co-Op-Marketing Asso. v. Huggins (Minn.) 203 NW 420. The members of the legislature from the various counties and districts of the state carried to their deliberations knowledge of such conditions in each portion thereof in considering such legislation. Congress has repeatedly legislated upon matters in which they recognized rights of the producer who might desire to manufacture or market his own product. The Federal Income Statute of 1921, Sec. 231, exempts farmers, co-operative associations, such as may be organized under Chapters 16 and 19 from income tax payment.

The ordinary commercial ginner within the state of Oklahoma may gin either as an individual, a co-partnership or a corporation, no statute, rule or provision of law restricts him in any wise in the enjoyment of full proceeds of the earnings under the rate fixed. He usually is engaged not only in ginning cotton but also in the purchase of seed cotton, cotton seed after he has ginned the cotton and frequently in the purchase of cotton for profit after it is ginned. A ginner has greater facility to purchase the seed than any one else. As he gins the cotton he catches the seed as they fall from the stand, and has the immediate means [fol. 64] for storage and housing of the same. The patron if he does not elect to sell to the ginner must receive them and haul them away, when as a rule he has no place for storage for accumulating as much as a car load so as to sell them to advantage. A great per cent. of the gins so operated are owned and controlled by cotton seed crushers operating cotton seed oil mills within the State of Oklahoma, such operation of gins not being entirely for the purpose of rendering a public service, but also for collecting cotton seed at a central point. Their gin business as ginners is incidental to that as crushers of seed to the end that they may be enabled to purchase the seed under favorable conditions. (See Choctaw Cotton Oil Co. v. Corporation Commission (Okla.) 247 Pac. 390; Planters Cotton & Ginning Co. v. West, 82 Okla. 247 Pac. 390; Planters Cotton & Ginning Co. v. West, 82 Okla. 145.

In the answer to the bill filed in this case it is alleged that complainant made an average profit on cotton gins

in which he was interested in the preceding year of as much as eighty-five per cent.

In the affidavit filed by the plaintiff in this case on preliminary hearing, which is a part of the record, he sets forth that the Choctaw Cotton Oil Company, which is a seed crushing organization, operates gins within the county of which Durant is the county seat, in the towns of Bennington, Bokchito, Caddo, Kemp and Kenefic, and that the Choctaw Gin and Choctaw Electric Gin Companies also operated at Durant. A gin organized under the act of 1919 "to be run co-operatively" does not render said proviso repugnant to the Fourteenth Amendment to the Federal Constitution.

In C. B. & Q. Railroad Co. v. Iowa, 94 U. S. 155, it is said:

"The statute divides the railroads of the state into classes, according to business, and establishes a maximum of rates for each of the classes. It operates uniformly on each class, and this is all the Constitution requires. The Supreme Court of the State, in the case of McAunich v. R. R. Co. 20 Iowa 343, in speaking of legislation as to classes, said: 'These laws are general and uniform not because they operate upon every person in the state, for they do not, but because every person who is brought within the relation and circumstances provided for is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation.' This Act does not grant to any railroad company privileges or immunities which, upon the same terms, do not equally belong to every other railroad company. Whenever a company comes into any class, it has all the 'privileges and immunities' that have been granted by the statute to any other company in that class. 'It is very clear that a uniform rate of charges for all railroad companies in the state might operate unjustly upon same. It was proper, therefore, to provide in some way for an adaptation of the rates to the circumstances of the different roads; and the General Assembly, in the exercise of its legislative discretion, has seen fit to do this by a

system of classification. Whether this was the best that could have been done is not for us to decide. Our province is only to determine whether it could be done at all, and under any circumstances. If it could, the legislature must decide for itself, subject to no control from us, whether the common good requires that it should be done."

In Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129 it is said:

[fol. 65 " * * * The law assailed was enacted by the state in the exercise of its police power, to prevent a practice conceived to be promotive of monopoly with its attendant evils. It is clearly settled that any classification adopted by a state in the exercise of this power which has a reasonable basis, and is therefore not arbitrary, will be sustained against an attack based upon equal protection of the laws clause of the 14th Amendment, and also that every state of facts sufficient to sustain such classification which can be reasonably conceived of as having existed when the law was enacted will be assumed. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 55 L. Ed. 369, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912-C 160, and cases cited; Rast v. Van Deman & L. Co., 240 U. S. 342, 60 L. Ed. 679, L. R. A. 1917-A 421, 38 Sup. Ct. Rep. 370, Ann. Cas. 1917-B 455. The record before us above shows that before the law assailed was enacted cotton gins had been operated in Mississippi by individuals as well as by corporations, but there is no showing that oil mills and cotton gins were both operated by an individual or by groups of individuals, and we think it may be assumed under the rule stated, that because of the larger capital required, and perhaps for other reasons, oil mills and cotton gins may have been operated in that state only by corporations, and that for this reason the restraint of the evil aimed at by the act of the legislature could be accomplished by controlling corporations only. Assuming this to be the fact when the law was enacted obviously the classsification objected to cannot be pronounced so without reasonable basis as to be arbitrary."

In Middleton v. Texas Power & Light Co., 249 U. S. 152, it is said:

"There is a strong presumption that a legislature understands and correctly appreciates the needs of its own

people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that state laws shall cover the entire field of proper legislation in a single enactment. If one entertained the view that the act might as well have been extended to other classes of employment, this would not amount to a constitutional objection. Rosenthal v. New York, 326 U. S. 260, 271, 57 L. Ed. 212, 217, 33 Sup. Ct. Rep. 27, Ann. Cas. 1914-B 71; Patsone v. Pennsylvania, 232 U. S. 138, 144, 58 L. Ed. 539, 543, 34 Sup. Ct. Rep. 281; Missouri K. & T. R. Co. v. Cade, 233 U. S. 642, 649, 650, 58 L. Ed. 1135, 1138, 34 Sup. Ct. Rep. 678; International Harvester Co. v. Missouri 234 U. S. 199, 215 58 L. Ed. 1276, 1283, 53 L. R. A. (N. S.) 525, 34 Sup. Ct. Rep. 859; Kookee Consol. Coke Co. v. Taylor, 234 U. S. 224, 227, 58 L. Ed. 1288, 34 Sup. Ct. Rep. 856; Miller v. Wilson, 236 U. S. 373, 384, 59 L. Ed. 628, 632, L. R. A. 1915-F 829, 35 Sup. Ct. Rep. 342. The burden being upon him who attacks a law for unconstitutionality, the courts need not be igenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism."

In Chicago, Rock Island & Pacific Railway Co. v. D. J. Perry, 259 U. S. 548, it is said:

"We are not advised of the precise reasons why the legislature cho-s*t* to put the policy of this statute into effect as to public service corporation, without going further; [fol. 66] nor is it worth while to inquire. It may have been that the public had a greater interest in the personnel of the public service corporations, or that the legislature deemed it expedient to begin with them as an experiment—or any one of a number of other reasons. It was peculiarly a matter for the legislature to decide, and not the least substantial ground is present for believing they acted arbitrarily. We feel safe in relying upon the general presumption that they knew what they were about. Middleton v. Texas Power & Light Co., 249 U. S. 152."

In Omaechevarri v. Idaho, 246 U. S. 343, it is said:

"We cannot say that the measure adopted by the state is unreasonable or arbitrary. It was found that conflicts between cattle rangers and sheep herders on the public

domain could be reconciled only by segregation. In national forests, where the use of land is regulated by the Federal Government, the plan of segregation is widely adopted. And it is not an arbitrary discrimination to give preference to cattle owners in prior occupancy without providing for a like preference to sheep owners in prior occupancy. For experience shows that sheep do not require protection against encroachment by cattle, and that cattle rangers are not likely to encroach upon ranges previously occupied by sheep herders. The propriety of treating sheep differently than cattle has been generally recognized."

The gin is to be operated co-operatively and is thereby placed in a classification by the legislature of the state. We do not reach a conclusion that such a classification is so unreasonable that it should be judicially annulled. If it is organized under the statute making that classification, and is so operated the fact that others besides growers and producers are permitted to become incorporators, does not operate to render the classification violative of the Fourteenth Amendment. They are limited as to amount of stock and voting participation and as to profits. The idea of the law and the trend of contemporary thought of law givers and expressions of courts alike is to encourage co-operative dealing in the products of agriculture. The complainant rests his case under the contention of a violation of the Federal Constitutional provision guaranteeing equal protection of the law, which seems to be without substantial merit. As to whether the complainant operates his gin under a franchise or license that is not essential to determine. In Oklahoma perpetual and exclusive franchises are prohibited. Oklahoma Constitution Article 2 Sec. 32; Article 5, Section 51, and Article 18, Section 7. In Boise City Artesian Hot & Cold Water Co. v. Boise City (9th CCA.) 123 Fed. 252, it is held that an ordinance granting right to lay and repair water pipes in the streets and alleys of the city, but without fixing any term for the privilege, is a grant of a license only, revocable at the will of the city, since it had no power to grant a perpetual franchise, and that appears to be the rule supported by the weight of authority. It is assumed that complainant may maintain this action under such status if the proviso assailed by him

is void, but conclude that he did not have such a vested right as to prevent the passage of said proviso if it does not amount to an arbitrary or unreasonable classification.

[fol. 67] That the question has become moot is untenable as the Durant Co-operative Gin Company is a party to this action. Complainant's bill should be dismissed.

Van Valkenburgh, Circuit Judge, concurs in the foregoing opinion, which is made the opinion of the Court.

Cotteral, District Judge, concurs in conclusion reached.

[File endorsement omitted.]

[fol. 68] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINAL DECREE—Filed Dec. 12, 1927

The above entitled cause having been heard and argued by counsel and submitted, on consideration of the pleadings, evidence and arguments, it is this day by the Court

Ordered, adjudged and decreed, that the plaintiff's bill should be and it is accordingly dismissed, and that the costs of this suit be taxed to the plaintiff; to all of which the plaintiff by his counsel at the time duly excepts.

December 12, 1927.

Arba S. Van Valkenburgh, U. S. Circuit Judge. John H. Cotteral, U. S. District Judge. Robert L. Williams, U. S. District Judge.

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Jan. 17, 1928

To the Honorable John H. Cotteral, United States District Judge for the Western District of Oklahoma:

The above named complainant, W. A. Frost, doing business under the name of the Mitchell Gin Company, feeling

aggrieved by the decree rendered and entered in the above entitled cause, on the 19th day of December, 1927, does hereby appeal from the said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and he prays that said appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States sitting at the City of Washington in the District of Columbia, as under the rules in such cases made and provided, and that the Court make all proper orders.

R. M. Rainey, S. B. Flynn, Attorneys for Complainant.

[File endorsement omitted.]

[fol. 70] In United States District Court

[Title omitted]

Assignments of Error—Filed Jan. 17, 1928

Comes now Complainant in the above entitled cause and files the following assignment of errors upon which he will rely in his appeal in said cause from the decree rendered by this Honorable Court on the 12th day of December, 1927:

I

The District Court of the United States for the Western District of Oklahoma erred in holding Section 3714, Compiled Laws of Oklahoma of 1921, as amended by Chapter 109 of the Session Laws of 1925, constitutional, and that the aforementioned amendment, containing the following provision:

"That on the presentation of a petition for the establishment of a gin to be run cooperatively, signed by one hundred citizens and taxpayers of the community where the gin is to be located, the Corporation Commission shall issue a license for said gin,"

is constitutional, and that the said proviso does not deprive this Complainant of his property without due process of law and does not deny to this Complainant equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 71] Wherefore, Complainant prays that said final decree be reversed and that the said District Court of the United States for the Western District of Oklahoma be ordered to enter a decree setting aside its said order and granting to this Complainant a permanent injunction, as prayed for, together with all other, further and suitable relief.

R. M. Rainey, S. B. Flynn, Attorneys for Complainant.

[File endorsement omitted.]

[fol. 72] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed Jan. 17, 1928

On motion and petition of Complainant, it is hereby ordered that an appeal to the Supreme Court of the United States, from the final decree heretofore filed and entered herein on the 12th day of December, 1927, be and the same is hereby allowed and that the bond on appeal be fixed in the sum of One Thousand ($1,000.00) Dollars.

Done at Oklahoma City, State of Oklahoma, this 17th day of January, 1928.

John H. Cotteral, District Judge.

[File endorsement omitted.]

[fols. 73-77] Bond on appeal for $1,000.00, approved and filed January 17, 1928, omitted in printing.

fols. 78 & 79 IN UNITED STATES DISTRICT COURT

[Titled omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed January 19, 1928

You are hereby requested to prepare transcript of the record in the above cause to be filed in the Supreme Court of the United States, said record to be printed accordance with the rules of said Court and the respective parties hereby stipulates that the transcript shall include the following portions of the record:

1. Citation and Service.
2. Bill of Complaint.
3. Motion to Dismiss and Answer.
4. Agreed Statement of Facts.
5. Opinion.
6. Decree.
7. Petition for Appeal.
8. Order Allowing Appeal.
9. Citation and Service.
10. Assignment of Errors.
11. Bond on Appeal.
12. Stipulation for Transcript of Record on Appeal.

Rainsey, Fynn, Green & Anderson, Attorneys for Complainant. Edwin Dabney, Attorney General, State of Oklahoma. E. S. Ratliff, Attorney for Corporation Commission, Its Members, and Durant Cooperative Gin Company.

[File endorsement omitted.]

[fol. 80] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION AS TO PARTS OF RECORD TO BE PRINTED—Filed February 3, 1928

In accordance with Rule eleven of this honorable court appellant hereby specifies the following as points upon which he will rely for a reversal of the judgment of the

United States District Court for the Western District of Oklahoma:

I

The said United States District Court for the Western District of Oklahoma committed error in holding Section 3714 of Compiled Laws of Oklahoma of 1921, as amended by Chapter 109 of the Session Laws of Oklahoma of 1925, constitutional by dismissing appellant's bill. Appellant contends that said Act as amended creates and authorizes an arbitrary and unreasonable classification of persons engaged in the business of ginning seed cotton in the State of Oklahoma, and that the amendment to said Act, in relieving co-operatively-run gins from the statutory requirement of securing a permit upon the presentation of a petition signed by one hundred citizens and taxpayers of the community where the gin is to be located, discriminates [fols. 81 & 82] against appellant and deprives him of his property without due process of law and denies to him the equal protection of the law as guarantted by the Fourteenth Amendment to the Constitution of the United States.

In support of the foregoing points appellant hereby designates the following parts of the record to be printed, which he thinks necessary for a proper determination of this appeal, and hereby requests the Clerk of this Honorable Court to have the same printed under his supervision:

1. Citation and Service.
2. Bill of Complaint.
3. Motion to Dismiss and Answer.
4. Opinion of United States District Court.
5. Final decree.
6. Petition for Appeal.
7. Order allowing appeal.
8. Citation and service.
9. Assignment of Errors.
10. Bond of appeal.
11. Stipulation for transcript of record and service.
12. Statement of points to be relied upon.

R. M. Rainey, Streter B. Fynn, Attorneys for Appellant.

The undersigned, Counsel for Appellees, hereby acknowledge service of Appellant's specifications of points upon

which he will rely in the Supreme Court and the designation of portions of the record to be printed, and accepts said designation of portions of record to be printed as calling for the proper record in this case.

Dated this 31 day of January, 1928.

Edwin Dabney, by V. I. Crowe, Attorney General of the State of Oklahoma. E. S. Ratliff, Counsel for Corporation Commission of the State of Oklahoma, Durant Co-operative Gin Co., et al.

[fol. 83] [File endorsement omitted.]

Endorsed on cover: File No. 33,192. W. Oklahoma D. C. U. S. Term No. 740. W. A. Frost, doing business under the name of Mitchell Gin Company, appellant, vs. Corporation Commisison of the State of Oklahoma, Fred Capshaw, Frank Carter, et al., etc., et al. Filed Feb. 3d, 1928. File No. 33,192.